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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,284	06/16/2005	Harald Jakob	7601/84332	2629
66991	7590	05/08/2008	EXAMINER	
LAW OFFICE OF MICHAEL A. SANZO, LLC			DELCOTTO, GREGORY R	
15400 CALHOUN DR.				
SUITE 125			ART UNIT	PAPER NUMBER
ROCKVILLE, MD 20855			1796	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/539,284	JAKOB ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on RCE filed 2/26/08.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 19-37,40 and 41 is/are pending in the application.

4a) Of the above claim(s) 32-36 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 19-31,37,40 and 41 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

1. Claims 19-37, 40, and 41 are pending. Claims 1-18, 38, and 39 have been canceled. Applicant's amendments and arguments filed 2/26/08 have been entered.

Claims 32-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/1/06. Note that, claims 37 and 38 have been canceled.

Objections/Rejections Withdrawn

The following objections/rejections set forth in the Office action mailed 10/31/07 have been withdrawn:

The rejection of claims 19-31, 37, 40, and 41 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of copending Application No. 11/301330 has been withdrawn due to the abandonment of this application.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 19-21, 23, 26, 28-31, 40, and 41 are rejected under 35 U.S.C. 102(b) as anticipated by Bertsch-Frank et al (US 5,902,682).

Bertsch-Frank et al are relied upon as set forth in the Office action mailed 8/18/06. Note that, aqueous solutions used to coat sodium percarbonate include a combined Na₂CO₃/sodium silicate solution containing 20% by weight of Na₂CO₃ and 8% by weight of sodium silicate prepared from a sodium waterglass solution with ca. 37°Be and a SiO₂ to Na₂O molar ratio of about 3.5 to 1. See column 8, lines 45-55. Note that, the Examiner asserts that an 8% by weight solution of sodium silicate would also be used when preparing an outer coating containing only sodium silicate as described in column 10, lines 55-69 and is described with sufficient specificity to one of ordinary skill in the art. Further, the Examiner asserts that the coated bleach particles as taught by Bertsch-Frank et al would inherently have the same properties as the

compositions recited by the instant claims because Bersch-Frank et al teach compositions containing the same components in the same amounts as recited by the instant claims wherein the particles are made by spraying an aqueous solution of the coating agent which is sodium silicate in the same amounts as recited by the instant claims onto the bleach particles.

Accordingly, the teachings of Bertsch-Frank et al anticipate the material limitations of the instant claims.

Claims 19-26, 28-31, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over CA 2,326,560 in view of Bertsch-Frank et al (US 5,902,682).

'560 teaches mono- or multilayer coated particulate peroxy compounds having a core of one or more peroxy compounds having a core of one or more peroxy compounds and a coating of predominantly inorganic compounds, wherein the core or the coating comprises one or more dyes. See Abstract. A particularly preferred peroxy compound is sodium percarbonate. See page 5, lines 5-15. The coating materials may be chosen from an inorganic substances which are suitable to be applied to the particulate peroxy compounds and have a stabilizing action on the peroxy compounds. Examples of coating materials are alkali metal salts such as sodium carbonates, sulfates, alkali metal silicates, etc. Specific examples of coating materials include sodium carbonate with sodium sulfate, etc. The coating is usually applied in an amount of from 0.5 to 20% by weight, based on the peroxy compound. See page 5, line 30 to page 6, line 20. To prepare the particulate peroxy compounds coated according to the invention in a fluidized bed, the particles to be coated which are in the fluidized bed are

sprayed with the coating material while maintaining a fluidized-bed temperature of from 30 to 100 degrees Celsius. If two or more layer are applied, then the aqueous solutions or dispersions of the coated materials are sprayed on successively. Note that, the Examiner asserts that spraying an aqueous solution of a coating material such as sodium silicate as taught by '560 is the same as using an aqueous solution of sodium silicate for the outer coating layer as recited by the instant claims. Additionally, the Examiner asserts that claim 19 is a product by process claims and even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product n the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. Once a product appearing to be substantially identical is found a rejection is made, the burden shifts to the applicant to show an unobvious result. See MPEP 2113.

For use in detergents and cleaners, preference is given to using particulate peroxy compounds which have a spherical shape and a diameter of from 0.8 m to 3.0 m. See page 8, lines 1-25.

'560 does not teach alkali metal silicates used for coating having the same modulus ratio as recited by the instant claims or a coated peroxygen compound having an inner coating containing a hydrate-forming inorganic salt, an outer coating containing

an alkali silicate having a specific modulus, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Bertsch-Frank et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkali metal silicate having the specific modulus as recited by the instant claims in the coating taught by '560, with a reasonable expectation of success, because Bertsch-Frank et al teach the use of alkali metal silicates having the specific modulus as recited by the instant claims as coating material in a similar peroxygen bleach coated particle and further, '560 teaches the use of alkali metal silicates as coating materials in general.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a coated peroxygen compound having an inner coating containing a hydrate-forming inorganic salt, an outer coating containing an alkali silicate having a specific modulus, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of '560 in combination with Bertsch-Frank et al suggest a coated peroxygen compound having an inner coating containing a hydrate-forming inorganic salt, an outer coating containing an alkali silicate having a specific modulus, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claim 22 is rejected under 35 USC 102(b), as being anticipated by, or 35 USC 103(a) as being unpatentable over Bertsch-Frank et al (US 5,902,682).

Bertsch-Frank et al are relied upon as set forth above. The Examiner asserts that the compositions as specifically taught by Bertsch-Frank et al would inherently have the same dissolution time as the compositions recited by instant claim 22 because Bertsch-Frank et al teach compositions containing the same components in the same amounts as recited by the instant claims. Note that, the Examiner asserts that claim 19 is a product by process claim due to the limitation “wherein said outer layer has been prepared using an aqueous solution comprising 2 to 20 wt% alkali metal silicate” and even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. Once a product appearing to be substantially identical is found a 35 USC 102/103 rejection is made, the burden shifts to the applicant to show an unobvious result. See MPEP 2113. Bertsch-Frank et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of Bertsch-Frank et al anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of Bertsch-Frank et al are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed dissolution

properties of the composition in order to provide the optimum bleaching and cleaning properties to the composition because Bertsch-Frank et al teach that the amounts and types of required components added to the composition may be varied.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertsch-Frank et al (US 5,902,682) as applied to claims 19-23, 26, 28-31, 40, and 41 above, and further in view of CA 2,326,560.

Bertsch-Frank et al are relied upon as set forth above. However, Bertsch-Frank et al do not teach the use of sodium sulfate as a coating agent in addition to the other requisite components of the composition as recited by instant claims 24 and 25.

'560 is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention as made, to use sodium sulfate as a coating agent in the composition taught by Bertsch-Frank et al, with a reasonable expectation of success, because '560 teaches the equivalence of sodium sulfate to sodium carbonate as a coating agent in a similar bleach coated particle and further, Bertsch-Frank et al teach the use of sodium carbonate as a coating material in general.

Claims 27 and 37 rejected under 35 U.S.C. 103(a) as being unpatentable over Bertsch-Frank et al (US 5,902,682) or CA 2,326,560 in view of Bertsch-Frank et al (US 5,902,682) as applied the rejected claims above, and further in view of Baillely et al (US 6,017,867).

Bersch-Frank et al and CA 2,326,560 are relied upon as set forth above. However, neither reference teaches the use of an auxiliary substance such as silica in

addition to the other requisite components of the composition as recited by instant claims 27 and 37.

Baillely et al teach a granular detergent composition comprising an alkali metal percarbonate, characterized in that percarbonate has a mean particle size of from 250 to 900 micrometers, and that said compositions comprise a hydrophobic material, selected from silica, talc, zeolite DAY, etc. See Abstract. This hydrophobic material such as silica, when used as a dusting agent onto said percarbonate particles prior to their incorporation into the composition, provides the storage stability of the percarbonate in all types of compositions. See column 1, lines 40-60.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a material such as silica as an outermost coating on the coated parcarbonate particles taught by Bertsch-Frank or '560, with a reasonable expectation of success, because Baillely et al teach the advantageous storage stability properties provided to a similar coated percarbonate particle when using silica as an outer coating.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 19-31, 37, 40, and 41 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 16-25, 30, and 31 of 10/539285. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 16-25, 30, and 31 of 10/539285 encompass the material limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a coated peroxygen compound having an inner coating containing a hydrate-forming inorganic salt, an outer coating containing an alkali silicate having a specific modulus, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success, because claims 16-25, 30, and 31 of 10/539285 suggest a coated peroxygen compound having an inner coating containing a hydrate-forming inorganic salt, an outer coating containing an alkali silicate having a specific modulus, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

With respect to the rejection of the instant claims under 35 USC 102 and 35 USC 103 using Bertsch-Frank et al, Applicant once again states that this reference does not disclose the concentration of metal silicates in the solutions used to make particles or the dissolution characteristics of the compositions made. Furthermore, with respect to obviousness, Applicant states that Bertsch-Frank does not recognize any relationship between the dissolution time of coated peroxygen particles and the concentration of an aqueous solution of a coating component. Additionally, Applicant once again states that comparative data has been presented in the instant specification in Examples 1 to 3 which shows that the release of active oxygen from the core of coated tablets depends upon the concentration of alkali metal silicate in the solutions used to make the outer coating. Further, Applicant states that products made with a sodium silicate solution having a concentration of 20% by weight, which is outside the presently claimed range, are different from the claimed products. Specifically, Applicant states that the rate at which peroxygen particles dissolve decreases as the concentration of alkali metal silicate in the solutions used to make the outer coating of these particles decreases; this is true even though the final particles have exactly the same amount of the alkali metal silicates.

In response, note that, upon a careful reading and inspection of Bertsch-Frank et al, the Examiner asserts, as stated above, that the teach teachings of Bertsch-Frank et al are sufficient to disclose the claimed invention with sufficient specificity under 35 USC 102(b) alone. Note that, Bertsch Frank et al specifically teach the use of aqueous

coating solutions of sodium silicate wherein the solution contains 8% by weight of sodium silicate (See column 8, lines 45-55) which falls within the range as recited by the instant claims. Thus, the Examiner asserts that the compositions as taught by Bertsch-Frank et al would inherently have the same dissolution properties as the compositions recited by the instant claims. Evidence of secondary considerations, such as unexpected results or commercial success, is irrelevant to 35 USC 102 rejections and thus cannot overcome a rejection so based. In re Wiggins, 488 F.2d 538, 543, 179 USPQ 421, 425 (CCPA 1973). See MPEP 2131.04.

Alternatively, even if Bertsch-Frank et al was not sufficient to anticipate the instant claims under 35 USC 102, which the Examiner is clearly not conceding, the Examiner maintains, as stated previously, that the data is not sufficient to show the unexpected and superior properties of the claimed invention over compositions falling outside the scope of the instant claims. First, note that Bertsch-Frank does teach coating the bleach particles using aqueous solutions of alkali metal silicate and Applicant has provided no comparison to the closest prior art; the Examiner asserts that one of ordinary skill in the art would reasonably expect the coated bleach activators of Bertsch-Frank et al to have the same dissolution properties as the particles recited in the instant claims because the particles taught by Bertsch-Frank et al are made the same way and contain the same components as the particles recited by the instant claims. As set forth above, claim 19 is a product by process claim and Applicant has provided no data or evidence showing that the composition as taught by Bertsch-Frank et al does not inherently have the same properties the composition recited by the instant

claims. While Applicant states that a direct comparison has not been done since Bertsch-Frank et al does not have any relevant teaching regarding the concentration of metal silicates in solutions used to form the outer layer of particles, this argument is not persuasive since without a comparison, the Examiner maintains, as stated previously, that he cannot conclusively determine whether the claimed composition is different from the prior art product. Further, the data presented in the specification is not commensurate in scope with the instant claims. The instant claims recite a range of 2 to 15% by weight of alkali metal silicate used to prepare an aqueous coating solution having a modulus of greater than 2.5 while the specification provides data with respect to a silicate having a modulus of 3.35 at 5 and 10% by weight which is not commensurate in scope with the claimed invention.

While Applicant has provided technical reasoning by stating that the solutions of Bertsch-Frank et al have a concentration of greater than 20% by weight of sodium silicate, which has been shown by the Examples to have greater dissolution (i.e. less dissolution time) than compositions prepared from a lower concentration of sodium silicate, and therefore by extrapolation, the solutions of Bertsch-Frank would also have such dissolution properties, as stated above, Applicant has not actually provided evidence showing that the particles of Bertsch-Frank are different from those recited by the instant claims. Thus, the Examiner maintains that the particles as taught by Bertsch Frank et al would inherently have the same properties as recited by the instant claims and Bertsch Frank et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory R. Del Cotto/
Primary Examiner, Art Unit 1796

/G. R. D./
May 2, 2008